

RAILCAR Inc.

Suite 1010
1447 Peachtree Street, N.E.
Atlanta, Georgia 30309

(404) 892-4811

RAILCAR

February 8, 1978

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Attention: Mrs. Mildred Lee
Room 1227-1220

9227
RECORDATION NO. Filed & Recorded

FEB 10 1978 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for filing and recording by the Interstate Commerce Commission are one original and two counterparts of the lease agreement between Railcar Inc. and the Maryland & Delaware Railroad Company. The identifying marks on these railroad cars are MDDE 1001 through MDDE 1035.

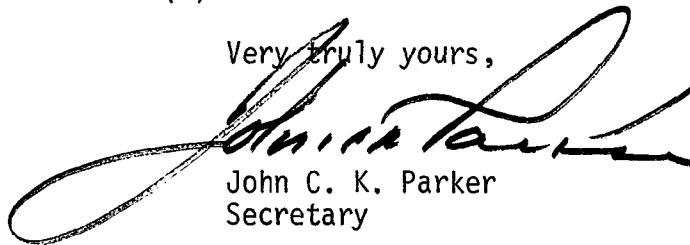
Also enclosed is this company's check in the sum of \$50.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing lease. This is in accordance with Interstate Commerce Act Section 20 (c).

RECEIVED

FEB 10 3 15 PM '78

CERTIFICATION UNIT

Very truly yours,



John C. K. Parker
Secretary

JCKP/jb

Enclosures

8-041A075

FEB 10 1978
561

ICC Washington, D. C.

Interstate Commerce Commission
Washington, D.C. 20423

2/14/78

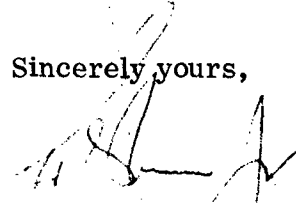
OFFICE OF THE SECRETARY

John C.K. Parker
Railcar Inc.
Suite 1010
1447 Peachtree Street, N.E.
Atlanta, Georgia 30309

Sir:
Dear

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **2/10/78** at **3:20pm**,
9227
and assigned recordation number(s)

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

FEB 10 1978 -S 22 PM

INTERSTATE COMMERCE COMMISSION

"Lessee")

Lessee desires to lease from RAILCAR as Lessor certain railroad cars, hereinafter specifically designated or to be specifically designated, all upon the rentals, terms and conditions as set forth in this Lease. For and in consideration of representations herein contained and other good and valuable consideration in hand paid,

1. Lease of Cars. RAILCAR agrees to lease to Lessee and Lessee agrees to and does hereby lease from RAILCAR that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 of this Lease and as is set forth in Schedules which may from time to time be added to this Lease. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of its delivery and acceptance hereunder and shall continue with respect to such Car for the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. RAILCAR shall deliver Cars/

11/7/77

f.o.t. at the delivery point specified in the schedule covering such Cars and from and after such delivery, RAILCAR shall pay all costs and expenses on account of transportation or movement of the Cars to and from any place and for any reason whatsoever.

2. Rental. The rental per Car per day shall be all Per Diem payable to Lessee on account of such Car when Car Usage is equal to or less than 90%, plus one-half of all Per Diem payable to Lessee on account of all Car Usage exceeding 90%, plus all excess demurrage payments which may be payable to Lessee by another railroad on account of use of Cars by such other railroad. Daily Car Usage of each Car shall be deemed to be the average Car Usage as finally determined for all Cars covered by this Lease as of the end of each calendar year or other applicable period during the term of this Lease. Lessee shall pay to RAILCAR within seven (7) days after receipt thereof at the address specified in Paragraph 14 all Per Diem and excess demurrage payments received by it with respect to any Car covered by this Lease. RAILCAR will within forty-five (45) days after the end of each calendar year during the term hereof compute the Car Usage for such year and the amount so determined to be due RAILCAR or to Lessee shall be promptly paid. Rental on each Car shall accrue from and after the date of delivery and acceptance of each Car, provided, however, that rental shall be payable by Lessee only for Per Diem, and excess demurrage payments actually received by or credited to it.

3. Acceptance of Cars. Within three (3) days after RAILCAR shall give Lessee notice that some or all Cars covered by a Schedule are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point of delivery and accept or reject them as being or failing to be in compliance with the terms hereof. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and shall be conclusively deemed delivered to and accepted by Lessee. Unless prior to acceptance of a Car, Lessee shall

[Handwritten signature and date 11/7/77]

direct RAILCAR to ship the Car directly to a specified point, RAILCAR may on Lessee's behalf place such Car under load in interchange service or ship the Car to the nearest railroad line of Lessee.

4. Records. RAILCAR shall keep records of and monitor the use and movements of the Cars. RAILCAR will audit Per Diem payments on a monthly basis and will process all Per Diem received. RAILCAR shall file claims with railroads failing to pay appropriate Per Diem. To permit RAILCAR to perform the above functions and to perform repair work as provided for in Paragraph 6 hereof, Lessee shall prepare and submit such applications and notifications as RAILCAR may request to insure that all records, registration, reports and payments pertaining to the Cars from railroads using the Cars or other parties are sent to such address as RAILCAR shall designate.

Lessee will at RAILCAR's expense file such applications for relief from any Interchange Rules as RAILCAR may direct to increase revenues of the Cars and will at RAILCAR's expense take all appropriate action to record and register the Cars as RAILCAR may request.

5. Use - Lettering. Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which they were designed. From and after the delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use of the Car for the full term of this Lease, but solely within the continental limits of the United States of America. Except for the lettering to be placed on the Cars by RAILCAR prior to delivery indicating the interest of Lessee, RAILCAR and any assignee or mortgagee of RAILCAR as permitted in Paragraph 10 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction

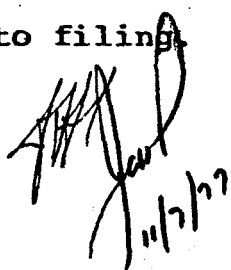
[Handwritten signature and date 11/7/77]

or consent of RAILCAR.

6. Repair Work. Except as otherwise provided herein, RAILCAR shall at its sole cost and expense perform all Repair Work or authorize or cause same to be done. Lessee shall at its sole cost and expense perform or cause to be performed all Repair Work required by reason of Lessee's negligence. RAILCAR shall have no responsibility for Repair Work until informed of the need therefor. RAILCAR may require Lessee to return Cars for preventive maintenance or Repair Work and may withdraw from this Lease any Cars which it in its sole discretion deems uneconomical for Repair Work of any kind.

7. Casualty Cars. RAILCAR shall bear the risk of any Car which is lost, stolen, destroyed or damaged beyond economical repair ("Casualty Car") other than on Lessee's lines. Lessee shall bear the risk of and be responsible for any Car which is lost, stolen, destroyed or damaged beyond economical repair on its lines and shall, within thirty (30) days after the occurrence of any such event, pay to RAILCAR the amount provided in the Interchange Rules to be paid for such Casualty Car. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to RAILCAR and Lessee shall cooperate with RAILCAR in the prosecution and collection of all claims therefor.


8. Taxes. RAILCAR shall pay all property taxes assessed or levied against the Cars. Lessee shall pay all taxes assessed or levied upon its interest as lessee of Cars and all taxes based upon the earnings or rental of Cars (other than income taxes of RAILCAR upon rentals paid to it hereunder unless such tax is in substitution for or relieves Lessee of taxes it would be otherwise obligated to pay hereunder). Railcar will file all property or ad valorem tax returns, copies of which shall be submitted to Lessee for its review and approval prior to filing.



9. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of RAILCAR as hereinafter provided. In the event that (1) daily Car Usage for all Cars or any group of Cars in any calendar quarter is less than 80%, then RAILCAR may at its option upon thirty (30) days' notice to Lessee terminate this Lease in its entirety, or terminate the Lease as to any group of Cars. Lessee shall at the termination of the Lease with respect to any Cars return such Cars to RAILCAR in the same condition (except as to Casualty Cars) in which the Cars were furnished and maintained by RAILCAR during the term hereof, ordinary wear and tear excepted. Upon the termination of the Lease with respect to any or all Cars, Lessee shall forthwith surrender possession of such Cars to RAILCAR at such location as Lessee may designate on its tracks or at the location of such cars at the time of termination, if acceptable to RAILCAR. Any costs associated with surrendering possession or returning the same to Lessee's tracks shall be born by RAILCAR. If requested by RAILCAR, Lessee shall provide free uninterrupted storage on its tracks for Cars as to which the Lease is terminated for as long as one (1) year, provided that risk of loss during such storage shall be RAILCAR's. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to RAILCAR, all per Diem and excess demurrage earned by such Car shall be paid to RAILCAR as additional rental for use of the Cars during the term hereof.

10. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

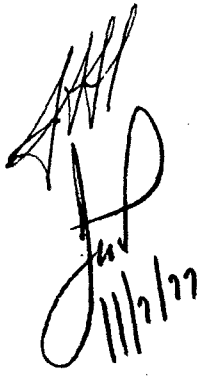
(a) Lessee shall have no right to assign this Lease or sublease or loan any of the Cars without the written consent of RAILCAR.

Handwritten signature and date "11/1/72" in the bottom right corner.

(b) All rights of RAILCAR hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by RAILCAR.

The making of an assignment or sublease by Lessee or an assignment by RAILCAR shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

11. Default. If Lessee or RAILCAR shall fail in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against either party under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of either party or its property, or either party shall make a general assignment for the benefit of creditors, then and in any of said events either party may in addition to all other rights and remedies provided in law or equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars and with respect to which said default has occurred and retake the Cars and thereafter recover any and all damages sustained by reason of either party's default. The obligation to pay rental then or thereafter due or any other sum or sums due and unpaid or any damages suffered by reason of lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

A handwritten signature, possibly "J. L. Smith", is written in the bottom right corner of the page. Below the signature, the date "11/2/77" is written.


12. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep Cars in good working order and condition and in compliance with all Interchange Rules.

"Interchange Rules" - all codes, rules, decisions, interpretations, laws and orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time during the term of this Lease by the Association of American Railroads and any other organization, agency or governmental authority, such as but not limited to the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, decisions, interpretations, laws or orders.

"Car Usage" - a percentage equal to the quotient obtained by dividing the aggregate number of days in a calendar year in which Per Diem is earned on a Car by Lessee commencing with its date of delivery, by the aggregate number of days in such year in which the Car is under lease to Lessee commencing with its date of delivery.

"Per Diem" shall mean and include any and all charges, costs and payments prescribed by the Interchange Rules prevailing from time to time throughout the term hereof, to be paid by one railroad or other party, to another railroad on




account of the use of a Car and applicable to Cars of the type and class covered by this Lease. By way of illustration and not limitation Per Diem shall include time charges, mileage charges and incentive charges, as well as any similar or other charges presently in effect or which may from time to time hereafter be placed in effect.

13. Warranty - Opinion. Lessee and RAILCAR each covenants, warrants and represents that all of the following matters shall be true and correct at all times that any Car is subject to this Lease:

(a) that both parties are a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of both parties and constitutes the legal, valid and binding obligation of both parties enforceable in accordance with its terms.

(c) no governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of both parties in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgment, order or regulation, or any indenture or agreement binding upon either party.



14. Miscellaneous.

(a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.

(b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

RAILCAR at: Suite 1010
1447 Peachtree Street, N.E.
Atlanta, Georgia 30309

Lessee at: P.O. Box 4.
Hurlock, MD

or such other address as either party may from time to time designate by such notice in writing to the other.

(c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect RAILCAR's title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by RAILCAR to confirm RAILCAR's interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.

(d) During the continuance of this Lease, RAILCAR shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or times wherever the Cars may be. _____



IN WITNESS WHEREOF, RAILCAR and Lessee have duly executed
this Lease as of the day and year first above written.

RAILCAR INC.
A Georgia Corporation

By:

~~Exec~~ VICE President

ATTEST:

Tess Cornett
~~Assistant Secretary~~
Notary Public, Georgia State at Large
My Commission Expires Nov. 18, 1980

The Maryland and Delaware R.R. Co.
By:
President

ATTEST:

ASST Secretary

DESCRIPTION OF CAR:

52'6" 100-TON GONDOLA CAR

NUMBER OF CARS:

35

REPORTING NUMBERS AND MARKS:

MDDE

PLACE OF DELIVERY:

N/A

TERM: Ten Years (10) years from the average date of delivery and acceptance of each Car covered by this Schedule. Average date of delivery is that date which is determined by (i) multiplying the number of Cars delivered by RAILCAR on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate on Inspection and Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

SPECIFICATIONS DESIGNATED BY LESSEE:

NONE

PLACE OF RETURN:

SEE CONTRACT

Lessee

By:



By:

